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Remarks

Claims 1-3, 5-7 and 9 stand rejected as being anticipated by *Perry* (3,335,804). The rejection is respectfully traversed. Claim 1, as amended, recites that the hammer head is reciprocally moveable relative to the carriage and the workpiece. No such structure is disclosed or suggested by *Perry*. In *Perry*, member 72 is at all times engaged with the upper end of the workpiece, e.g., post 148. See in this regard column 3, lines 65-71. In other words, the post 148 is driven by what *Perry* refers to as the hammer 150 which acts upon the hammer carriage 114, the member 72 being carried by the hammer carriage 114. Member 72 of *Perry* is the same as Applicant's claimed hammer head in the sense that it is the piece that strikes the top of the workpiece or as *Perry* refers to it the post, in order to drive the workpiece into the ground. Stated differently, *Perry* does not disclose a hammer head forming part of a hammer assembly which is mounted on a carriage which is selectively engageable with the workpiece in the sense that the hammer head is reciprocally moveable relative to the workpiece. Such a construction cannot be arrived at in *Perry* without a complete redesign of the *Perry* device employing Applicant's disclosure.

One of the stated goals of the *Perry* device is to have a driving member which engages the upper end of the post and which is preloaded there against such that an impact means (member 72 of *Perry*) on the driving machine of the invention can pound the post into the ground while it is initially preloaded vertically to avoid battering of the upper end of the fence post. See column 1, lines 42-50. *Perry* is seeking to avoid a situation where the impact means (driving member 72) is not always in engagement with the workpiece (post) since, per the teaching of *Perry*, this leads to battering of the upper end

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of the fence post and requires more time and power. Accordingly, if Perry were redesigned such that member 72, the equivalent of Applicant's hammer head, were not "preloaded" against the post, then one of the objects of the *Perry* invention would be frustrated. It is respectfully submitted that Claims 1-3, 5-7 and 9 are neither anticipated or rendered obvious by *Perry*.

Claims 1, 8 and 10 stand rejected as obvious over *Perry* in view of *Younes*. This rejection is likewise respectfully traversed. The infirmities of *Perry*, as discussed above, are not cured by the *Younes* reference. Further, since Claims 8 and 10 further limit Claim 1 which has been demonstrated to be patentable over *Perry*, it is respectfully submitted that Claims 8 and 10 are patentable over *Perry* in combination with *Younes*.

Applicant has also submitted new Claims 11 and 12. Claim 11 calls for the hammer head to extend outwardly of the second end of the carriage, i.e., closest to the workpiece, and further recites that the hammer head is reciprocally moveable relative to the carriage and the workpiece. Again, such a structure is not shown or remotely suggested by *Perry*. Accordingly, it is respectfully submitted that Claim 11 is patentable over *Perry*.

Claim 12 recites that the hammer assembly has a housing which is fixed relative to the carriage with respect to longitudinal movement between the carriage and the housing. Again, this structure is not shown or suggested by *Perry*. Once again in *Perry*, the hammer or hammer assembly 150 is, of necessity, moveable relative to the carriage which carries the hammer head 72 lest the device be rendered inoperative.

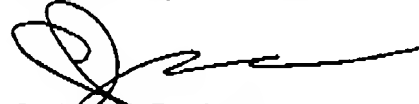
It is respectfully submitted that independent Claims 1, 11 and 12 are inimical to the structure not only shown but desired by *Perry*. At the expense of being redundant,

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Applicant again wishes to point out that one of the goals of the *Perry* device is to maintain the driving member, i.e., member 72, which is the equivalent of Applicant's hammer head in preloaded engagement with the workpiece, e.g., the fence post, during the driving of the fence post into the ground. None of Applicant's Independent claims recites such a structure or are obvious in view of such a structure and indeed, the *Perry* patent teaches away from Applicant's invention.

In view of the foregoing amendments and remarks, it is respectfully submitted that all claims presented for consideration are in condition for allowance which is hereby earnestly solicited.

Respectfully submitted,



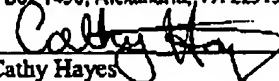
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By: 
Cathy Hayes

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